IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 5, 1999 Session

DOROTHY JEAN SHELTON v. MICHAEL E. SHELTON

Appeal from the Chancery Court for Coffee County
No. 97-210 Gerald L. Ewell, Sr., Chancellor

No. M1998-01004-COA-R3-CV - Filed February 6, 2001

This appeal involves a dispute over spousal support following the dissolution of a 27-year marriage. Following a bench trial, the Chancery Court for Coffee County awarded the wife a divorce on the ground of inappropriate marital conduct and directed the husband to pay $4,000 per month in spousal support for ten years. On this appeal, the husband takes issue with the amount and duration of the spousal support award. We have determined that the record amply supports the trial court's decision and, therefore, affirm the spousal support award.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Eric J. Burch, Manchester, Tennessee, for the appellant, Michael E. Shelton.

Roger J. Bean and Jeffrey D. Ridner, Tullahoma, Tennessee, for the appellee, Dorothy Jean Shelton.

OPINION

Dorothy Shelton and Michael Shelton first met when they were teenagers in Manchester. They dated during high school, and continued seeing each other while they attended the University of Tennessee at Memphis. When they were married in Coffee County on June 26, 1971, Dr. Shelton was twenty-one, and Ms. Shelton was twenty. Dr. Shelton eventually earned a degree in dentistry, and Ms. Shelton earned a degree in dental hygiene. They returned to Manchester in 1974, and Dr. Shelton opened his practice. Ms. Shelton worked as Dr. Shelton's dental hygienist, but did not draw a separate paycheck. Dr. Shelton's patient base expanded steadily, and his practice became extremely successful.

The Sheltons had their first child in 1975 and their second child in 1976. Ms. Shelton returned to work as Dr. Shelton's hygienist after each of these children were born. Following the

birth of their third child in 1978, Ms. Shelton decided to remain at home with her three small children. The Sheltons had their fourth and fifth children in 1980 and 1983. Ms. Shelton continued in her role of wife and mother. Dr. Shelton continued to work long hours at his dental practice and to devote his leisure time to golf, tennis, and other activities that kept him away from home.

Ms. Shelton returned to work as Dr. Shelton's dental hygienist in 1987 when their youngest child was five years old. The dental practice continued to thrive, and by 1997, Dr. Shelton's gross income was approximately $298,500. Dr. Shelton continued to devote a great deal of time to his practice. He spent a significant amount of his leisure time at the Highland Racquet Club near Tullahoma where he played sports and relaxed with his friends. He also took frequent weekend trips with friends to ski or play golf.

The Sheltons' marriage began to deteriorate in the mid-1990s. Ms. Shelton complained that Dr. Shelton treated her poorly and neglected his children. Dr. Shelton was also unhappy with the marriage. He filed for divorce in January 1996 but later dismissed the complaint. In the summer of 1996, Ms. Shelton told Dr. Shelton that she no longer desired to continue working as his dental hygienist and that she planned to return to school. A short time later, she stopped working as a dental hygienist and enrolled in Covenant College in Chattanooga to complete the requirements for her baccalaureate degree. These actions did not sit well with Dr. Shelton.

On June 2, 1997, after twenty-seven years of marriage, Ms. Shelton filed for divorce in the Chancery Court for Coffee County. Following a bench trial, the trial court granted Ms. Shelton a divorce on the ground of inappropriate marital conduct and awarded her custody of the parties' two children who were still minors. The trial court divided the parties' sizeable marital estate equally between the parties and directed Dr. Shelton to pay $4,200 per month in child support. The trial court also directed Dr. Shelton to pay Ms. Shelton $4,000 per month in spousal support for ten years.

I.

The only issues Dr. Shelton raises on this appeal involve the award for spousal support. His primary argument is that Ms. Shelton is not entitled to long-term spousal support. As an alternative, he asserts that the amount and duration of the spousal support award is excessive.

A.

There are no hard and fast rules for spousal support decisions. *Anderton v. Anderton*, 988 S.W.2d 675, 682 (Tenn. Ct. App. 1998); *Crain v. Crain*, 925 S.W.2d 232, 233 (Tenn. Ct. App. 1996); *Stone v. Stone*, 56 Tenn. App. 607, 615-16, 409 S.W.2d 388, 392-93 (1966). Trial courts have broad discretion to determine whether spousal support is needed and, if so, its nature, amount, and duration. *Goodman v. Goodman*, 8 S.W.3d 289, 293 (Tenn. Ct. App. 1999); *Garfinkel v. Garfinkel*, 945 S.W.2d 744, 748 (Tenn. Ct. App. 1996). Appellate courts are generally disinclined to second-guess a trial court's spousal support decision unless it is not supported by the evidence or

is contrary to the public policies reflected in the applicable statutes. *Brown v. Brown*, 913 S.W.2d 163, 169 (Tenn. Ct. App. 1994); *Ingram v. Ingram*, 721 S.W.2d 262, 264 (Tenn. Ct. App. 1986).

Tenn. Code Ann. §36-5-101(d)(1) (Supp. 2000) reflects a preference for temporary, rehabilitative spousal support, as opposed to long-term support. *Crabtree v. Crabtree*, 16 S.W.3d 356, 358 (Tenn. 2000); *Goodman v. Goodman*, 8 S.W.3d at 293; *Herrera v. Herrera*, 944 S.W.2d 379, 387 (Tenn. Ct. App. 1996). The purpose of rehabilitative support is to enable the disadvantaged spouse to acquire additional job skills, education, or training that will enable him or her to be more self-sufficient. *Smith v. Smith*, 912 S.W.2d 155, 160 (Tenn. Ct. App. 1995); *Cranford v. Cranford*, 772 S.W.2d 48, 51 (Tenn. Ct. App. 1989). On the other hand, the purpose of long-term spousal support is to provide support to a disadvantaged spouse who is unable to achieve some degree of self-sufficiency. *Loria v. Loria*, 952 S.W.2d 836, 838 (Tenn. Ct. App. 1997). The statutory preference for rehabilitative support does not entirely displace other forms of spousal support when the facts warrant long term or more open-ended support. *Aaron v. Aaron*, 909 S.W.2d 408, 410 (Tenn. 1995); *Isbell v. Isbell*, 816 S.W.2d 735, 739 (Tenn. 1991).

Even though Tenn. Code Ann. § 36-5-101(d)(1)(K) provides that fault is a relevant consideration when setting spousal support, decisions regarding spousal support are not intended to be punitive. *Anderton v. Anderton*, 988 S.W.2d at 682; *Kinard v. Kinard*, 986 S.W.2d 220, 234 (Tenn. Ct. App.1998). The purpose of spousal support, whether it is called "rehabilitative" or "long-term," is to enable the disadvantaged spouse to become and remain self-sufficient and, when possible, mitigate the harsh economic realities of divorce. In most circumstances, the courts cannot fashion a remedy that enables both spouses to maintain their pre-divorce standard of living because the parties do not have sufficient resources to accomplish this. Thus, the courts will decline to impoverish an obligor spouse in order to enable the disadvantaged spouse to continue to enjoy his or her pre-divorce standard of living. *Goodman v. Goodman*, 8 S.W.3d at 295-96; *Brown v. Brown*, 913 S.W.2d at 169-70.

Decisions regarding the entitlement to spousal support, as well as the amount and duration of spousal support, hinge on the unique facts of each case and require a careful balancing of many factors, including the factors identified in Tenn. Code Ann. § 36-5-101(d)(1). *Watters v. Watters*, 22 S.W.3d 817, 821 (Tenn. Ct. App. 1999); *Hawkins v. Hawkins*, 883 S.W.2d 622, 625 (Tenn. Ct. App. 1994). Among these factors, the two considered most important are the disadvantaged spouse's need and the obligor spouse's ability to pay. *Anderton v. Anderton*, 988 S.W.2d at 683; *Lindsey v. Lindsey*, 976 S.W.2d 175, 179 (Tenn. Ct. App. 1997); *Umstot v. Umstot*, 968 S.W.2d 819, 823 (Tenn. Ct. App. 1997). Of these two factors, the disadvantaged spouse's need is the threshold consideration. *Aaron v. Aaron*, 909 S.W.2d at 410; *Watters v. Watters*, 22 S.W.3d at 821.

The concept of "need" transcends the basic necessities of life. While all persons require basic shelter and sustenance, a person's "needs," as a practical matter, are most often dictated by the person's personal priorities, customary lifestyle, and financial means. One person's "needs" may very well be another person's "wants." Thus, the concept of "need" is necessarily elastic and subjective. Most commonly, the courts focus on a disadvantaged spouse's needs because there are

insufficient resources to provide for both spouse's needs and wants. When the obligor spouse is unable to support a disadvantaged spouse's needs and wants, the needs come first. However, when the obligor spouse has sufficient resources, it is perfectly appropriate for trial courts to consider the disadvantaged spouse's needs and wants. The needs and wants of a disadvantaged spouse are appropriate considerations with regard to both long-term spousal support and rehabilitative support.[1] This case presents circumstances where the obligor spouse is capable of providing the disadvantaged spouse with sufficient support to meet both her needs and her reasonable wants.

B.

Ms. Shelton has demonstrated that she is entitled to spousal support. During the parties' 27-year marriage, she has been a homemaker and the primary care giver for the parties' five children. In addition to fulfilling her domestic duties, Ms. Shelton has materially and directly contributed to her husband's successful dental practice by working as his unpaid dental hygienist and by shouldering a great deal of the tasks at home to enable him to devote the time to develop his practice. While Ms. Shelton was trained as a dental hygienist, the combination of her responsibilities at home and her work for Dr. Shelton have prevented her from furthering her own education and from embarking on a career of her own.

Aside from rental income from property that she received as part of the distribution of the marital estate, Ms. Shelton is currently earning no income. She is pursuing a Mater's degree in counseling which she anticipates will take three years to complete. Her ability to earn income or to accumulate capital assets will never approach Dr. Shelton's, no matter whether she is employed as a dental hygienist or a counselor. Accordingly, the record supports the conclusion that Ms. Shelton is economically disadvantaged in comparison with Dr. Shelton and, therefore, that she is entitled to spousal support.

The next consideration involves Ms. Shelton's needs and Dr. Shelton's ability to pay. The Sheltons lived a life of privilege and comfort during their marriage. Notwithstanding the expenses associated with raising five children (all but two of whom are now past the age of majority), the parties were able to afford a country club membership and frequent out-of-town vacation and recreational trips. In light of the essentially undisputed proof of Dr. Shelton's continuing earnings, it would be unreasonable and unfair to limit Dr. Shelton's support obligation to an amount that would enable Ms. Shelton to get by on some basic subsistence level. She became accustomed to more than that during her twenty-seven years of marriage. Dr. Shelton is able to provide sufficient spousal support to enable Ms. Shelton to approximate her pre-divorce standard of living. Based on

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[1]This case does not require us to address the "unsettled" question about what the concept of "rehabilitation" means. *See Dempsey v. Dempsey*, No. M1998-00972-COA-R3-CV, 2000 WL 1006945, at *4 (Tenn. Ct. App. July 21, 2000) (No Tenn. R. App. P. 11 application filed). For our purposes here, it is sufficient to note that rehabilitative support and long-term spousal support have common goals. Both of them are intended to enable an economically disadvantaged spouse to function independently and with financial security in society. *Isbell v. Isbell*, 816 S.W.2d at 738-39.

this record, we perceive no reason why Ms. Shelton should be forced to stop attending NCAA basketball championships and tennis tournaments or participating in mission projects. Accordingly, we have no basis to second-guess the trial court's decision to set the amount of Dr. Shelton's spousal support obligation at $4,000 per month.

The final consideration is the duration of the spousal support. Ms. Shelton is currently fifty years old and is in good physical and mental health. She is willing and able to work and is, in fact, presently embarked on three-year course of study and training to become a counselor. After completing her education, Ms. Shelton will require additional time to establish herself in her new career. Even when she does, her income will never approach Dr. Shelton's income. In light of the length of the parties' marriage, Ms. Shelton's contributions to Dr. Shelton's dental practice, Ms. Shelton's contributions to the family, the parties' respective earning capacity, and the manner in which the trial court divided the marital estate, we have concluded that the record contains ample support for the trial court's conclusion that Dr. Shelton's support obligation should last for ten years.

II.

We affirm the judgment directing Dr. Shelton to pay Ms. Shelton $4,000 per month in spousal support for ten years and remand the case to the trial court for whatever further proceedings may be required consistent with this opinion. We tax the costs of this appeal to Michael E. Shelton and his surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUDGE